

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

CONE FINANCIAL GROUP INC.,

Plaintiff,

v.

Civil Action File No: 7:09-CV-118-HL

EMPLOYERS INSURANCE
COMPANY OF WAUSAU,

Defendant.

**DEFENDANT'S, EMPLOYERS INSURANCE COMPANY
OF WAUSAU, MOTION TO DEPOSIT FUNDS INTO COURT**

Defendant, Employers Insurance Company of Wausau, pursuant to Federal Rule of Civil Procedure Rule 67, respectfully moves the Court for an order permitting it to deposit certain funds into the registry of the Court and says:

1. On or about 1 August 2010, Wausau issued Cone a credit invoice pursuant to the policy in issue, a copy of which invoice is attached as exhibit 1. The invoice reflects a credit of \$120,120.19. As a result of this credit and pursuant to Federal Rule of Civil Procedure Rule 11, Wausau dismissed its counterclaim upon stipulation of Plaintiff. DE 37; 39.
2. The documentation supporting and explaining the computation of the credit is part of exhibit 1 and indicates, in relevant part, that a loss multiplier of .1950 was used in computing the variable expense factor. *See* exhibit 1, "Invoice Adjustment Detail."
3. Cone has sued Wausau based in part on a deductible plan that provides for a loss multiplier of 1.10. DE 1, Exhibit 1B. Cone alleges that Wausau has impermissibly applied a higher loss multiplier (19.5%) than is permitted by the parties' agreement.

Wausau is in the process of moving for judgment on the pleadings as to Cone's Counts II and III that are predicated on the proposal that Cone alleges is the governing deductible plan.

4. Notwithstanding Cone's protest that Wausau has used the incorrect and inflated loss multiplier, Cone demanded payment of the \$120,120.19 credit amount that was computed using the same factor Cone protests is incorrect. On 27 July 2010, the undersigned contacted Cone's counsel in an attempt to determine that Cone had no dispute about the computation of the credit, *see* exhibit 2, but Cone did not acknowledge its agreement to the computation of the sum it demanded of Wausau.¹

5. Rule 67(a) (Depositing Property) provides:

If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party- on notice to every other party and by leave of court- may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

See Cajun Electric Power Co-op, Inc. v. Riley Stoker Corporation, 901 F.2d 441, 444-45 (5th Cir. 1990) ("The ... purpose [of Rule 67] is to relieve the depositor of responsibility for the fund in dispute while the parties hash out their differences with respect to it.").

6. The applicable deductible plan is in dispute. The computation underlying the credit claimed by Cone- for which Cone has moved for leave to sue Wausau- is concomitantly in dispute. Wausau respectfully submits that the deposit and maintenance in the Court registry of the sum of \$120,120.19 is appropriate while the parties litigate the

¹ Part of Cone's protest pursuant to exhibit 2 is that it lacked supporting documentation regarding SITF submissions, an issue addressed by Wausau- in relation to the Dillow claim- in opposition to Cone's motion to amend its pleading to allege a contract claim against Wausau for failure to pay Cone the credit amount [DE 40; 43] and its motion to extend the discovery deadline [DE 41; 44].

issue of the applicable deductible plan and respectfully requests that the Court exercise its discretion and permit the deposit.

WHEREFORE, Defendant, Employers Insurance Company of Wausau, respectfully requests that the Court grant this motion and order that Wausau may deposit the sum of \$120,120.19 in the Court's registry.

Respectfully submitted,

**EMPLOYERS INSURANCE
COMPANY OF WAUSAU**

By Counsel

By: G. Mason White

G. Mason White, GA Bar No. 754581
BRENNAN, HARRIS & ROMINGER,
LLP
2 East Bryan Street, Suite 1300
Savannah, Georgia 31402
Tel. 912.233.3399; Fax. 912.236.4558
Co-counsel for Employers Insurance
Company of Wausau

Of Counsel

Mary Morris, FL Bar No. 55573
MORRIS & MORRIS, P.A.
777 South Flagler Drive
Suite 800- West Tower
West Palm Beach, Florida 33401
Tel. 561.838.9811; Fax. 561.828.9351
(adm. *pro hac vice*)

CERTIFICATE OF SERVICE

I certify that on 16 August 2010 electronically filed the foregoing with the Clerk of the Court by using CM/ECF. I also certify that the foregoing is being served this day on the following attorney, via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for counsel or parties who are not authorized to receive Notices of Electronic Filing: Jefferson M. Allen, Esquire, Cohen Cooper Estep & Allen, LLC, 3330 Cumberland Boulevard, Suite 600, Atlanta, Georgia 30339.

/s G. Mason White



CONE FINANCIAL GROUP INC

EXHIBIT TO INVOICE #: 02989404
 ACCOUNT #: 4200
 INVOICE DATE: 11-04-10
 VALUATION DATE: 07-01-10

— INVOICEDETAIL —

Workers Compensation Deductible		
WAC-Z9D-424724-011		
PAID LOSSES AND ALLOCATED EXPENSES		
Paid Losses	\$ (102,355.56)	
Allocated Expenses	\$1,836.58	
TOTAL PAID LOSSES AND ALLOCATED EXPENSES		\$ (100,518.98)
ADJUSTED CHARGES		
Refer to the attached adjustment exhibit for detail information.		\$ (19,601.21)
WAC-Z9D-424724-011 CONTRACTTOTAL		\$ (120,120.19)
INVOICETOTAL		\$ (120,120.19)



CONE FINANCIAL GROUP INC

EXHIBIT TO INVOICE #: 02289404
 ACCOUNT #: 4200
 INVOICE DATE: 07-04-10
 VALUATION DATE: 07-01-10

—INVOICEADJUSTMENTDETAIL—

WORKERS COMPENSATION DEDUCTIBLE			
WAC-Z9D-424724-011			
Variable Expense	GA	\$1,354,518.02 X .1950 =	\$264,131.01
			\$283,732.22
			(19,601.21)
WAC-Z9D-424724-011	CONTRACTADJUSTMENTTOTAL		(19,601.21)



PRIOR TO CURRENT VALUATIONS SUMMARY

Report Number: VS01

Description: This report is a summary by contract number for each plan effective date. Totals include to-date incurred & paid losses and loss reserves & claim counts for the current and prior valuation. The changes for the period are also included. The totals are for all invoices on the plan.

Exhibit to Invoice #: 02289404

Customer Name: CONE FINANCIAL GROUP INC

Account Number: 1724

Type of Service: Workers Compensation Deductible Plan

Effective Date(s): 11-30-01 11-30-02

Line(s): Workers Compensation

Contract Number(s): WAC-Z9D-424724-011 **Retention Limits:** 2001 contract numbers, 250,000 per occurrence; allocated expense included in limit; 2,000,000 plan aggregate.

Report Valuation: 07-01-10

Activity Period: 06-01-10 07-01-10



CUSTOMER: CONE FINANCIAL GROUP INC
 PLAN EFFECTIVE: 11-30-01 11-30-02
 ACTIVITY PERIOD: 06-01-10 07-01-10
 VALUED AS-OF: 07-01-10

PRIOR TO CURRENT VALUATION SUMMARY

THRU TO CURRENT PRODUCTION SUMMARY									
-- RETENTION PAID LOSS AND EXPENSE SUMMARY --				RETENTION INCURRED LOSS RESERVE			CLAIM COUNT		
CONTRACT NUMBER	TOTAL PAID LOSS [1]	TOTAL PAID EXPENSE [2]	TOTAL LOSS & EXPENSE [3 = 1 + 2]	TOTAL INCURRED LOSS & EXPENSE [4]	TOTAL RETENTION INCURRED LOSS & EXPENSE [5]	RESERVE [6 = 5 - 3]	INSURED LOSS [7 = 4 - 5]	TOTAL CLAIMS [8]	TOTAL OPEN CLAIMS [9]
WAC-29D-424724-011									
AS-OF: 07-01-10	1,264,042.78	182,615.82	1,446,658.60	1,446,660.00	1,446,660.00	1.40	0.00	42	0
AS-OF: 06-01-10	1,366,398.34	180,779.24	1,547,177.58	1,552,456.79	1,552,456.79	5,279.21	0.00	42	1
CHANGE	(102,355.56)	1,836.58	(100,518.90)	(105,796.79)	(105,796.79)	(5,277.81)	0.00	0	-1
PLAN TOTAL:									
AS-OF: 07-01-10	1,264,042.78	182,615.82	1,446,658.60	1,446,660.00	1,446,660.00	1.40	0.00	42	0
AS-OF: 06-01-10	1,366,398.34	180,779.24	1,547,177.58	1,552,456.79	1,552,456.79	5,279.21	0.00	42	1
CHANGE	(102,355.56)	1,836.58	(100,518.90)	(105,796.79)	(105,796.79)	(5,277.81)	0.00	0	-1

Report Number: VS01
 Exhibit to Invoice Number: 02289404



LOCATION SUMMARY

Report Number: LS01

Description: This report is a summary by location number for each plan effective date. It includes the total billed paid loss and expense activity for the current period. Only location and contract numbers with billed activity are listed.

Exhibit to Invoice #: 02289404

Customer Name: CONE FINANCIAL GROUP INC

Account Number: - 4724

Type of Service: Workers Compensation Deductible
Plan

Effective Date(s): 11-30-01 11-30-02

Line(s): Workers Compensation

Contract Number(s): WAC-Z9D-424724-011 Retention Limits: 2001 contract numbers, 250,000 per occurrence;
allocated expense included in limit; 2,000,000 plan aggregate.

Report Valuation: 07-01-10

Activity Period: 06-01-10 07-01-10



CUSTOMER: CONE FINANCIAL GROUP INC
 PLAN EFFECTIVE: 11-30-01 11-30-02
 ACTIVITY PERIOD: 06-01-10 07-01-10
 VALUED AS-OF: 07-01-10

LOCATION SUMMARY

CONTRACT NUMBER LOCATION CODE LOCATION NAME	RETENTION PAID THIS PERIOD				TOTAL PAID LOSSES & EXPENSES
	INDEMNITY PAID LOSSES	MEDICAL PAID LOSSES	TOTAL PAID LOSSES	TOTAL PAID EXPENSES	
WAC-29D-424724-01.1					
000007	(50,577.51)	(51,778.05)	(102,355.56)	45.56	(102,309.00)
WFS - VALDOSTA					
000025	0.00	0.00	0.00	1,790.02	1,790.02
WFS - CARROLTON					
WAC-29D-424724-01.1 CONTRACT TOTAL:	(50,577.51)	(51,778.05)	(102,355.56)	1,835.58	(100,518.98)
PLAN TOTAL:	(50,577.51)	(51,778.05)	(102,355.56)	1,835.58	(100,518.98)

Report Number: LS01
 Exhibit to Invoice Number: 02288404

**CLAIM ACTIVITY DETAIL****Report Number:** CA01**Description:** This report is a listing of the individual claim numbers associated with the loss activity invoiced. Only contracts and claim numbers with billed paid losses and expenses for the current period are shown.**Exhibit to Invoice #:** 02289404**Customer Name:** CONE FINANCIAL GROUP INC**Account Number:** .4724**Type of Service:** Workers Compensation Deductible**Contract****Effective Date(s):** 11-30-01 11-30-02**Line(s):** Workers Compensation**Contract Number(s):** WAC-Z9D-424724-011 **Retention Limits:** 2001 contract numbers, 250,000 per occurrence; allocated expense included in limit; 2,000,000 plan aggregate.**Report Valuation:** 07-01-10**Activity Period:** 06-01-10 07-01-10



CUSTOMER: CONB FINANCIAL GROUP INC
 CONTRACT: WAC-28D-42474-011
 EFFECTIVE PERIOD: 11-30-01 11-30-02
 ACTIVITY PERIOD: 06-01-10 07-01-10
 VALUED AS-OF: 07-01-10

CLAIM ACTIVITY DETAIL

CLAIM ACTIVITY DETAIL										RETENTION PAID THIS PERIOD					
CLAIM NO. CLAIMANT NAME O/F	STATE ACC DATE RPT DATE	INCURRED INDEMNITY		INCURRED MEDICAL		INCURRED EXPENSE		TOTAL INCURRED		RETENTION PAID TO DATE	INDEMNITY PAID LOSSES	MEDICAL PAID LOSSES	TOTAL PAID LOSSES	TOTAL PAID EXPENSES	TOTAL PAID LOSSES & EXPENSES
		PAID INDEMNITY	PAID INDEMNITY	PAID MEDICAL	PAID MEDICAL	PAID EXPENSE	PAID EXPENSE	TOTAL PAID TO DATE	TOTAL PAID TO DATE						
LOCATION: 000007															
WPS - VALDOSTA															
C 550-629718	GA														
DILLOW, ROBERT L	04-17-02	50,612.00		31,767.00		38,089.00		120,468.00							
F	07-16-02	50,612.15		31,767.15		38,089.11		120,468.41	120,468.41	(50,577.51)	(51,778.05)	(102,355.56)	46.56	(102,309.00)	
LOCATION TOTAL:															
										(50,577.51)	(51,778.05)	(102,355.56)	46.56	(102,309.00)	
LOCATION: 000025															
WPS - CARROLTON															
C 550-659200	GA														
JONES, RUDERICK	06-19-02	10,000.00		1,082.00		4,148.00		15,230.00							
F	09-09-02	10,000.00		1,081.99		4,148.07		15,230.06	15,230.06	0.00	0.00	0.00	1,790.02	1,790.02	
LOCATION TOTAL:															
										0.00	0.00	0.00	1,790.02	1,790.02	
CONTRACT TOTAL:															
										(50,577.51)	(51,778.05)	(102,355.56)	1,835.58	(100,518.98)	

Report Number: CA01
 Exhibit to Invoice Number: 02289404

Mary Morris

From: Mary Morris
Sent: Tuesday, July 27, 2010 10:41 AM
To: 'Jefferson M. Allen'
Cc: Hal Whiteman; Mason White; Michael R. Morris
Subject: RE: Letter Re: Cone v. Wausau

I am indeed perplexed as to why Cone would demand payment pursuant to documentation with which it would not concur. Is there some problem?

-----Original Message-----

From: Jefferson M. Allen [mailto:jallen@ccealaw.com]
Sent: Tuesday, July 27, 2010 10:36 AM
To: Mary Morris
Cc: Hal Whiteman; Mason White; Michael R. Morris
Subject: Re: Letter Re: Cone v. Wausau

I don't believe we can stipulate to that without having a copy of the file submission. Are you saying that your client will only forward the refund if Cone agrees with your clients accounting?

Jefferson M. Allen
Cohen Cooper Estep & Allen LLC
3350 Riverwood Parkway
Suite 2220
Atlanta, Georgia 30339
404-814-0000 x 6
678-595-5731 (cell)

On Jul 27, 2010, at 9:18 AM, "Mary Morris" <MoMorris@morris-morris.com> wrote:

> Good morning, Gentlemen. We understand you may have questions about the source of funds that resulted in the recently posted credit of \$120,120.19 but I necessarily infer from your demand of today for payment of the credit that Cone does not dispute the underlying computations and content of the supporting documentation accompanying the attached invoice number 02289404 that resulted in the credit of \$120,120.19. Please confirm. Thank you.

>

> This communication may contain privileged and confidential information from the law firm of Morris & Morris, P.A. that is protected from dissemination and disclosure. If you are not the intended recipient of this message, please be advised that any disclosure or dissemination of the information in the message is prohibited. Please delete a misdirected e-mail from your inbox and deleted items box. If you have any questions, please contact the message's sender.

> **From:** Jefferson M. Allen [mailto:jallen@ccealaw.com]

> **Sent:** Tuesday, July 27, 2010 6:56 AM

> **To:** Mary Morris; Michael R. Morris

> **Cc:** Hal Whiteman; Mason White

> **Subject:** Letter Re: Cone v. Wausau

>

> Dear Counsel -

>

> Attached please find a letter regarding Liberty Mutual's recent "invoice" showing a credit owed to Cone in the amount of \$120,120.19

>

> We would be grateful for a response as soon as possible. Thank you

>

> Begin forwarded message:
>
>
> From: "jallen@ccewlaw.com<mailto:jallen@ccewlaw.com>"
<jallen@ccewlaw.com<mailto:jallen@ccewlaw.com>>
> Date: July 27, 2010 3:02:55 AM EDT
> To: "Jefferson M. Allen" <jallen@ccealaw.com<mailto:jallen@ccealaw.com>>
> Subject: Scanned Document
> Reply-To: "Jefferson M. Allen" <jallen@ccealaw.com<mailto:jallen@ccealaw.com>>
>
> <DeductibleJuly2010.pdf>